

FILED

NOV 15 2006

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY D. MILLER DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re)	No. 199164
)	
FREDERICK GATLIN)	<u>Order</u>
)	
On Habeas Corpus)	

FREDERICK GATLIN ("Petitioner") petitions for a writ of habeas corpus. Petitioner challenges his strike priors.

In In Re Harris, (1993) 5 Cal.4th 813, the California Supreme Court reaffirmed the rule that "habeas corpus will not serve as a second appeal." (In Re Harris, supra, 5 Cal. 4th at 825, quoting In Re Foss (1974) 10 Cal.3d 910, 930.) Therefore, habeas corpus relief is not available for claims that were raised and rejected on direct appeal. (In Re Harris at 825, citing In Re Waltreus (1965) 62 Cal.2d 218, 225.) Conversely, "the writ will not lie where the claimed errors could have been, but were not raised upon a timely appeal from a judgment." (Harris at 829 (emphasis in original), citing In Re Dixon (1953) 41 Cal.2d 756.) Petitioner's claims were or could have been brought on direct appeal.

Accordingly, the petition for a writ of habeas corpus is DENIED.

Date: 10/30/06

Diane Northway
DIANE NORTHWAY
JUDGE OF THE SUPERIOR COURT



Cc: Petitioner
District Attorney
Research

<p>IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA</p> <p><u>Plaintiff:</u> PEOPLE OF THE STATE OF CALIFORNIA</p> <p><u>Defendant</u> FREDERICK GATLIN</p>	<p>FILED</p> <p>NOV 15 2006</p> <p>KIRI TORRE Chief Executive Officer/Clerk Superior Court of CA County of Santa Clara</p> <p>BY <u>D. MILLER</u> DEPUTY</p>
<p>PROOF OF SERVICE BY MAIL OF: ORDER RE: WRIT OF HABEAS CORPUS</p>	<p>CASE NUMBER: No. 199164</p>

CLERK'S CERTIFICATE OF MAILING: I certify that I am not a party to this case and that a true copy of this document was mailed first class postage fully prepaid in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on 11/15/06. I declare under penalty of perjury that the foregoing is true and correct.

KIRI TORRE, Chief Executive Officer

By  Clerk

Deidre Miller

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CJIC